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No. 99-1580

Supreme Court, U.S.
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IN THE
Supreme Court of the United States

LETICIA JARAMILLO and JOSEPH REY,

Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF

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Contrary to the assertions advanced in Respondent's Brief in Opposition, the viewing interests recognized as sufficient to establish standing in *United Church of Christ v. FCC*, 359 F.2d 994 (D.C. Cir. 1966) (Opp. 4-5) (Pet. 4-5) are not limited to interests in a particular sort of programming. In providing an opportunity for judicial review on behalf of any "aggrieved" person, Congress has signaled its intent to "cast the standing net broadly," *Federal Election Commission v. Akins*, 524 U.S. 11, 19 (1998). Nothing in *United Church of Christ* limits viewer standing to those who object to "program impairing circumstances." On the contrary, the court declined to "enumerate[] or characterize[] specifically" what viewer interests should be credited. 359 F.2d at 1005. Rather than impose a judicial straightjacket on public participation rights, *United Church of Christ* and subsequent cases recognized that the FCC was best equipped to evaluate the circumstances under which the viewing audience may be injured or put at risk by licensee misconduct.

As this Court reiterated in *Friends of the Earth v. Laidlaw Environmental Services*, 120 S. Ct. 693, 697 (2000), "reasonable concerns" about the likelihood that licensee misconduct will harm individual interests are sufficient "injury" to satisfy Article III. Thus, in *Llerandi v. FCC*, 863 F.2d 79, 85 (D.C. Cir. 1988) viewers were entitled to challenge a license because of concern that the license award would reduce competition. There was no "program impairing" conduct in *Llerandi* but only the FCC's judgment, articulated in its "duopoly" rule, that broadcaster concentration was likely to reduce viewer choice in some indeterminate fashion. The injury against which petitioners have sought protection in this case is similarly grounded in a longstanding FCC judgment that past conduct is a reliable

indicator of "future broadcast performance." *Character Qualifications in Broadcast Licensing,* 102 F.C.C.2d 1179, 1227 (1986). In establishing its policy concerning licensee "character," the Commission has reasonably concluded that those who have lied to the Commission are not likely to be "reliable operators of their stations." 102 FCC 2d at 1228. Petitioners, as members of the WKCF-TV viewing area, are entitled to receive television service from a reliable station operator. Their injury is not "subjective" or hypothetical; it reflects the FCC's own expert judgment about the link between past licensee conduct and future service That there is a potential risk of receiving service from an unreliable licensee is sufficient injury for standing purposes. *See Duke Power v. Environment Study Group*, 438 U.S. 59 (risk of increased radiation from power plants is sufficient injury); *see also Friends of the Earth v. Laidlaw* (future risk from "excess" effluents is injury, even if they have not been shown to have actually degraded receiving waters).

Finally, that the D.C. Circuit has departed from its precedents on a question of national importance should not insulate its decision from this Court's review. Within the last few weeks this Court has granted at least two petitions for certiorari to review the D.C. Circuit's construction of the Clean Air Act, another law of nationwide application that vests exclusive appellate jurisdiction initially in that Circuit. *See American Trucking Assns v. Browner*, No. 99-1426 (cert. granted, May 30, 2000) and *Browner v. American Trucking Assns*, No. 99-1257 (cert. granted, May 22, 2000).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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